

**APPENDIX****I****NJ PUBLIC EMPLOYEES  
OCCUPATIONAL HEALTH  
AND SAFETY ACT****NEW JERSEY DEPARTMENT OF LABOR DIVISION OF WORKPLACE STANDARDS  
NEW JERSEY PUBLIC EMPLOYEES OCCUPATIONAL SAFETY AND HEALTH ACT**

*N. J. S. A. 34:6A-25 et. seq,  
P. L. 1983, c. 516 effective January 17, 1984*

**34:6A-25 SHORT TITLE**

This act shall be known and may be cited as the New Jersey Public Employees Occupational Safety and Health Act.

**34:6A-26 LEGISLATIVE FINDINGS**

The Legislature finds that the safety and health of public employees in the workplace is of primary public concern. Personal injuries and illnesses arising out of work situations result not only in wage loss and increased medical expenses for employees, but also in decreased productivity and increased workers' compensation expenses for employers. The Legislature therefore declares:

- a. That it is the policy of this State to ensure that all public employees be provided with safe and healthful work environments free from recognized hazards,
- b. That it is the responsibility of the State to promulgate standards for the protection of the health and safety of its public workforce, and
- c. That it is in the public interest for public employers and public employees to join in a cooperative effort to enforce these standards.

**34:6A-27 DEFINITIONS**

As used in this act:

- a. "Advisory board" means the Public Employees Occupational Safety and Health Advisory Board created by N.J.S.A. 34: 6A-28.
- b. "Commissioner" means the Commissioner of Labor or his designee.
- c. "Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of: (1) the State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency; or (2) any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district create pursuant to law.
- d. "Employee" means any public employee, any person holding a position by appointment or employment in the service of an "employer" as that term is used in this act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this act: provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. shall be excluded from the coverage of this act;
- e. "Employee representative" means a "representative" as that term is defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34: 13A-1 et seq.;

- f. "Review commission" means the Occupational Safety and Health Review Commission created by N.J.S.A. 34:6A-42;
- g. "Secretary" means the Secretary of the United States Department of Labor;
- h. "Workplace" means a place where public employees are assigned to work.

### **34:6A-28 PUBLIC EMPLOYEES OCCUPATIONAL SAFETY AND HEALTH ADVISORY BOARD**

There is created a Public Employees Occupational Safety and Health Advisory Board to assist the commissioner in establishing standards for the occupational safety and health of public employees. The board shall make itself available to receive information regarding matters of concern to public employees in the areas of occupational safety and health. The advisory board, under the chairmanship of the commissioner, shall consist of the Commissioner of the Department of Health, the Commissioner of the Department of Environmental Protection, the Commissioner of the Department of Community Affairs and the State Treasurer and 18 members to be appointed by the Governor, as follows:

One member representing the fire service, one member representing municipalities, one member representing municipal employees, one member representing county government, one member representing employees of county government, one member representing State employees, one member representing public healthcare facilities, one member representing employees of public healthcare facilities, one member representing correctional institutions, one member representing employees of correctional institutions, one member representing law enforcement employees, one member representing local school boards, one member representing local school board employees, one member representing Rutgers, The State University, one member representing employees in institutions of higher education, and three members representing the public.

The members selected by the Governor shall be selected on the basis of their experience and competence in the field of occupational safety and health. No more than nine members appointed by the Governor shall be from the same political party. Each member shall serve for a term of 3 years and until his successor is appointed and qualified. A vacancy shall be filled by appointment by the Governor to the unexpired term.

The members of the advisory board shall serve without compensation but shall be entitled to re-

imbursement for their actual traveling expenses and other expenses incurred in the performance of their duties.

### **34:6A-29 PLAN FOR DEVELOPMENT AND ENFORCEMENT OF STANDARDS: PRIMARY AGENCY RESPONSIBLE FOR ADMINISTRATION AND ENFORCEMENT**

The commissioner shall, in consultation with the Commissioner of Health and the advisory board, promulgate a plan for the development and enforcement of occupational safety and health standards with respect to public employers and public employees, in accordance with section 18 (c) of the Occupational Safety and Health Act of 1970, Public Law 91-596 (29 U.S.C.651 et seq.).

The Department of Labor shall be the primary agency responsible for administering and enforcing this plan throughout the State. The plan shall:

- a. Provide for the development and enforcement of safety and health standards, provided, however, that the standards for building and structural safety shall not exceed those established by the Commissioner of Community Affairs pursuant to the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq. nor shall they exceed the standards for fire safety established by the Commissioner of Community Affairs pursuant to the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq.;
- b. Provide for the right of entry and inspection of safety standards in all work places by the commissioner;
- c. Provide for the right of entry and inspection of health standards in all workplaces by the Commissioner of Health;
- d. Prohibit advance notice of inspections;
- e. Contain satisfactory assurances that the Department of Labor has the legal authority and qualified personnel necessary for the enforcement of the standards;
- f. Give satisfactory assurances that the State will devote adequate funds to the administration and enforcement of the standards;
- g. Contain satisfactory assurances that the State will, to the extent permitted by law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in the approved plan; and

## 94 ■ APPENDIX I

- h. Provide that the Department of Labor shall make such reports to the secretary in the form and containing the information that the Secretary from time to time requires.

### **34:6A-30 ADOPTION OF STANDARDS IN COMPLIANCE WITH APPLICABLE FEDERAL LAWS, MORE STRINGENT THAN FEDERAL STANDARDS OR STATE STANDARDS**

No sooner than 180 days after the effective date of this act, the commissioner shall provide at the minimum, for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the Secretary under the authority of the Occupational Safety and Health Act of 1970. Where no Federal standards are applicable or where standards more stringent than the Federal standards are deemed advisable, the commissioner shall, in consultation with the Commissioner of Health and the Commissioner of Community Affairs and, with the advice and Consent of the advisory board, provide for the development of State standards as may be necessary in special circumstances. The commissioner shall meet with the advisory board at least four times a year for these purposes.

### **34:6A-31 REGULATIONS TO MAKE LAW ENFORCEABLE**

The commissioner, in consultation with the Commissioner of health and the Commissioner of Community Affairs and with the advice and consent of the advisory board, shall by regulation:

- a. Provide for a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards arising from undesirable, inappropriate, or unnecessarily hazardous or unhealthy working conditions at the workplace and of stimulating employers and employees to institute new, and to perfect existing, programs for providing safe and healthful working conditions;
- b. Provide for the publication and dissemination to employers, employees, and labor organizations, and the posting, where appropriate, by employers of informational, educational and training materials calculated to aid and assist in achieving the objectives of this act;
- c. Provide for the establishment of new, and for the perfection and expansion of existing, programs for occupational safety and health education for employers and employees and institute methods and procedures for the es-

tablishment of a program for voluntary compliance by employers and employees with the standards established pursuant to this act.

### **34:6A-32 REGULATIONS FOR ENFORCEMENT AND ADMINISTRATION OF ACT; DIFFERENTIATION IN APPLICATION DUE TO EXISTENCE PRIOR TO PROMULGATION; GRANT OF VARIANCE WITHOUT COMPLIANCE WITH PROCEDURE; DATE OF APPLICATION TO LEASES**

The commissioner shall, in consultation with the Commissioner of Health and the Commissioner of Community Affairs and with the advice and consent of the advisory board, promulgate all regulations which he deems necessary for the proper administration and enforcement of this act. With respect to any regulations governing standards for either design or construction for structures or for equipment in laboratories of higher education institutions constituting, comprising or part of a workplace, the regulations may distinguish between structures completed or equipment in laboratories of higher education institutions purchased prior to the issuance of the regulations and those to be completed or purchased thereafter. Insofar as design and structural features of workplaces or equipment may, in the commissioner's judgement, be determined to comply with the requirements for a permanent variance as set forth in N.J.S.A. 34:6A-39c without the need for further inquiry into the particular practices, means, methods, operations or process used or to be used in any such workplace, the regulations may provide for the approval of those features, although they do not meet standards promulgated for new construction, without the necessity for a variance procedure. This exemption for obtaining a variance shall not apply to those areas specified in N.J.S.A. 34:6A-37a which are under the jurisdiction of the Commissioner of Health nor to any work for which a construction permit is required pursuant to the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq. and the regulations adopted thereunder, nor to any equipment, device, or procedure required pursuant to the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq., and the regulations adopted thereunder.

Absent a clear and present danger to the employees' health or safety, nothing in this act shall be construed to require landlords of space leased by a public employer to physically upgrade said premises beyond the level of health or safety rules and regulations in effect at the time the lease was executed. Deficiencies resulting either from occupant use or deferred maintenance by the lessor

shall be subject to correction in accordance with the governing rules and regulations at the time the lease went into effect. However, a lease may not be entered into after promulgation of safety rules and regulations pursuant to this act unless the leased property is in conformance with such rules and regulations.

### **34:6A-33 DUTIES OF EMPLOYER**

Every employer shall:

- a. Provide each of his employees with employment and place of employment which are free from recognized hazards which may cause serious injury or death to his employees;
- b. Comply with occupational safety and health standards promulgated under this act; and
- c. In the absence of existing standards take all prudent measures to comply with written recommendations made by the Commissioner, the Commissioner of Community Affairs or the Commissioner of Health to reduce the risk of exposure to unsafe or unhealthy conditions which have been shown to be detrimental to employee health or safety. A written rationale including the scientific basis for each recommendation shall be presented to the affected employer.

### **34:6A-34 DUTY OF COMPLIANCE BY PUBLIC EMPLOYEES**

Every public employee shall comply with occupational safety and health standards and all regulations promulgated under this act which are applicable to his own actions and conduct.

### **34:6A-35 INSPECTIONS BY COMMISSIONER; RIGHT OF ENTRY; RECORDS; AVAILABILITY TO PUBLIC; NOTICE OF VIOLATIONS**

- a. The commissioner shall be charged with making inspections in all regulated areas, except as may be provided pursuant to N.J.S.A. 34:6A-37a.
- b. The commissioner shall have the right of entry at reasonable hours into any workplace when he has reason to believe that a violation of safety standards exists and to conduct such investigations as he may deem necessary. The commissioner shall maintain records of the results of any such investigation, which shall be made available to the public upon request. The authority of the commissioner to inspect any premises for purposes of investigating an alleged violation of safety standards shall not be limited to the alleged

violation but shall extend to any other area of the premises in which he has reason to believe that a violation of the safety standards promulgated under this act exists.

- c. If the commissioner concludes that conditions or practices in violation of the prescribed safety standards exist in any workplace, he shall inform the affected employees and employers of the danger.

### **34:6A-36 INSPECTION BY COMMISSIONER BY NOTICE OF VIOLATION OR EXISTENCE OF IMMINENT DANGER AND REQUEST; PROCEDURE**

- a. Any employee, group of employees or employee representative who believes that a violation of a safety standard exists, or that an imminent danger exists, may request an inspection by giving notice to the commissioner of the violation or danger. The notice and request shall be in writing, shall set forth the grounds for the notice and shall be signed by the employee, a group of employees or an employee representative. The commissioner shall give affected public employers notice that a complaint has been filed within five working days from receipt of the complaint, except that on the request of the person giving the notice, his name or the name of any employee representative giving the notice shall be withheld. The commissioner shall conduct an appropriate inspection at the earliest time possible.

The commissioner shall so interpret and administer this section so as to encourage any employee, group of employees or employee representative who believes that a violation of a safety standard exists, or that an imminent danger exists, to report that violation or danger in the first instance to the employer's safety officer.

- b. A representative of the employer, the employee or employees giving the notice and an employee representative shall be given the opportunity to accompany the commissioner during an inspection for the purpose of aiding in such inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees concerning matters of safety in the workplace.
- c. Any employee who accompanies the commissioner on an inspection shall receive payment of normal wages for the time spent during the inspection.
- d. The information obtained by the commissioner under this section shall be obtained will a minimum burden upon the employer.

### **34:6A-37 INSPECTION BY COMMISSIONER OF HEALTH; RIGHT OF ENTRY; RECORDS; AVAILABILITY TO PUBLIC; NOTICE OF VIOLATIONS**

- a. The Commissioner of the Department of Health shall be charged with making inspections in the following areas:
  - (1) Occupational health and environmental control;
  - (2) Medical and first aid;
  - (3) Toxic and hazardous substances; and
  - (4) Respiratory protective equipment.
- b. The Commissioner of Health or his designee shall have the right of entry at reasonable hours into any workplace when he has reason to believe that a violation of health standards exists and to conduct such investigations as he may deem necessary. The Commissioner of Health shall maintain records of the results of any such investigation, which shall be made available to the public upon request. The Commissioner of Health shall make the records available to the commissioner for purposes of enforcement and for the purpose of reporting to the Secretary. The authority of the Commissioner of Health to inspect any premises for purpose of investigating an alleged violation of health standards shall not be limited to the alleged violation but shall extend to any other area of the premises in which he has reason to believe that a violation of the health standards promulgated under this act exists.
- c. If the Commissioner of Health concludes that conditions or practices in violation of the prescribed health standards exist in any workplace, he shall inform the affected employees and employers of the danger.

### **34:6A-38 INSPECTION BY COMMISSIONER OF HEALTH OR OF COMMUNITY AFFAIRS BY NOTICE OF VIOLATION OR EXISTENCE OF IMMINENT DANGER AND REQUEST; PROCEDURE**

- a. Any employee, group of employees, or employee representative who believes that a violation of a health standard or of a building, fire safety or structural standard exists, or that an imminent danger exists, may request an inspection by giving notice to the Commissioner of Health or to the Commissioner of Community Affairs, as the case may be, of the violation or danger. The notice and request shall be in writing, shall set forth the grounds for the notice and shall be signed by the employee, a group of employees or em-

ployee representative. The Commissioner of Health or the Commissioner of Community Affairs, as the case may be, shall give affected public employers notice that a complaint has been filed within five working days from receipt of the complaint, except that on the request of the person giving the notice, his name or any employee representative giving the notice shall be withheld. The Commissioner of Health or the Commissioner of Community Affairs, as the case may be, shall conduct an appropriate inspection at the earliest time possible.

The commissioner shall so interpret and administer this section so as to encourage any employee, group of employees or employee representative who believes that a violation of a safety standard exists, or that an imminent danger exists, to report that violation or danger in the first instance to the employer's safety officer.

- b. A representative of the employer, the employee or employees giving the notice and an employee representative shall be given the opportunity to accompany the Commissioner of Health or the Commissioner of Community Affairs during an inspection for the purpose of aiding in such inspection. Where there is no authorized employee representative, the Commissioner of Health shall consult with a reasonable number of employees concerning matters of health in the workplace and the Commissioner of Community Affairs shall consult with a reasonable number of employees concerning matters of building, structural and fire safety in the workplace.
- c. Any employee who accompanies the Commissioner of Health or the Commissioner of Community Affairs on an inspection shall receive payment of normal wages for the time spent during the inspection.
- d. The information obtained by the Commissioner of Health or the Commissioner of Community Affairs under this section shall be obtained with a minimum burden upon the employer.

### **34:6A-39 TEMPORARY AND PERMANENT VARIANCES**

- a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this act.

A temporary order shall be granted only if the employer files an application with the commissioner which meets the requirements of this section and establishes in a hearing

conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. that:

- (1) He is unable to comply with the standard by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to comply with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
- (2) He is taking all available steps to safeguard employees against the hazards covered by the standards; and
- (3) He has an effective program for complying with the standard as quickly as practicable.

Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer shall adopt and use while the order is in effect and the order shall state in detail what the employer's program shall be for complying with the standard.

A temporary order may be granted only if notice to the employees is given; provided, however, that the commissioner may issue an interim order to be effective until a decision is made on the basis of the hearing. An employee representative or, where one does not exist, the affected employees, may appear at the hearing, with or without counsel, and submit testimony concerning the employer's application for the variance. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed no more than twice so long as the requirements of this section are met and if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect longer than 180 days.

- b. An application for temporary variance shall contain:
  - (1) A specification of the standard or portion thereof from which the employer seeks a variance;
  - (2) A representation by the employer, supported by representations from qualified persons who have first hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;
  - (3) A statement of the steps he has taken and will take, with specific dates, to pro-

tect employees against the hazard covered by the standard;

- (4) A statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to comply with the standard;
  - (5) A certification that he has informed his employees of the application by giving a copy thereof to their employee representative where one exists, and posting a statement at the place where notices to employees are normally posted, giving a summary of the application and specifying where a copy may be examined. A description of the notification procedure used by the employer shall be contained in the certification. The information to the employees shall also inform them of their right to appear and be heard as set forth in subsection a. of this section, at the hearing on the variance application; and
  - (6) A statement, if appropriate, that such a variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.
- c. Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this act. An employee representative or, where one does not exist, the affected employees, shall be given notice of each such application and shall be afforded an opportunity to participate in a hearing pursuant to the Administrative Procedure Act., N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. on the merits of the application, with or without counsel, and to submit testimony. The commissioner shall issue such rule or order if he determines on the record, after an opportunity for an inspection, where appropriate, that the proponent of the variance has demonstrated by a preponderance of the evidence, that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide workplaces which are as safe and healthful as possible under the circumstances justifying the variance. The rule or order so issued shall prescribe the conditions the employer shall maintain and the practices, means, methods, operations and processes which he shall adopt and utilize to the extent they differ from any standard adopted pursuant to this act. Such a rule or

order may be modified or revoked Upon application by an employer, any employee, group of employees or employees representative, or by the commissioner on his own motion, in the manner prescribed for its issuance under this section at any time after six months from its issuance.

- d. In determining whether to grant a variance from a health standard, the commissioner shall consult with the Commissioner of Health. In determining whether to grant a variance from a building, fire safety or structural safety standard, the commissioner shall consult with the Commissioner of Community Affairs.

#### **34:6A-40 EMPLOYERS' RECORDS; AVAILABILITY FOR FIVE YEARS TO COMMISSIONER AND COMMISSIONER OF HEALTH; PUBLIC INSPECTION; NOTICE TO EMPLOYEES OF EXPOSURE TO TOXIC MATERIALS IN EXCESS OF STANDARDS ALLOWED**

In accordance with the commissioner's regulations, each employer shall make available for up to five years the following records to the commissioner and the Commissioner of Health:

- a. Records regarding the employer's activities relating to this act as the commissioner deems necessary or appropriate for developing information regarding the causes and prevention of occupational accidents and illness.
- b. Such records, which shall be available for public inspection, regarding periodic reports of work-related deaths, and injuries and illnesses which involve lost time from work, medical treatment, loss of consciousness, restriction of work of motion, or which necessitate transfer to another job or function.
- c. Such records regarding employee exposure to potentially toxic materials or other harmful physical agents which the regulations require to be monitored or measured. Each employee or former employee shall be informed of all records which will indicate his own exposure to toxic materials or harmful physical agents and the properties, characteristics and effects thereof. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials of harmful physical agents in concentrations or at levels which exceed those prescribed by any safety and health standard promulgated under this act, and shall inform any employee who is being exposed of the corrective action being taken and the time limit for compliance pursuant to N.J.S.A. 34:6A-41a.

#### **34:6A-41 VIOLATIONS; DETERMINATIONS; WRITTEN ORDER OF COMPLIANCE; POSTING; FAILURE TO COMPLY; PENALTIES; ENFORCEMENT; COMPROMISE AND SETTLEMENT**

- a. If the commissioner determines that an employer has violated a provision of this act, or a safety or health standard or regulation promulgated under this act, he shall with reasonable promptness issue to the employer a written order to comply which shall describe the nature of the violation, including a reference to the provision of this section, standard, regulation or order alleged to have been violated, the sanction therefor, where appropriate, and shall fix a reasonable time for compliance. Determinations regarding health standards, and written orders issued pursuant thereto, shall be made in consultation with the Commissioner of Health.
- b. Where the commissioner issues to an employer an order to comply, the employer shall post such order or a copy thereof at or near each location of the violation cited in the order so that it is clearly visible to affected employees. The commissioner shall make such order available to employee representatives and affected employees.
- c. If the time for compliance with an order of the commissioner issued pursuant to this section elapses, and the employer has not made a good faith effort to comply, within its powers and financial resources, the employer shall be liable to a penalty of not more than \$1,000.00 per day to be collected in a civil action commenced by the commissioner by a summary proceeding under The Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. in the Superior Court, county district court, or a municipal court, all of which shall have jurisdiction to enforce The Penalty Enforcement Law in connection with this act. If the violation is of a continuing nature, each day during which it continues after the date given for compliance in accordance with the order of the department shall constitute an additional separate and distinct offense.
- d. The commissioner is authorized to compromise and settle any claim for a penalty under this section in such amount as, in the discretion of the commissioner, may appear appropriate and equitable under all of the circumstances, including a rebate of any such penalty paid up to 90% thereof where such person satisfies the commissioner within one year or such other period as the commissioner may deem reasonable that such viola-

tion had been eliminated or removed or that such order or injunction has been met or satisfied, as the case may be. In any claim involving investigations conducted by the Department of Health, the commissioner shall make the determination as to the compromise or settlement of the claim in consultation with the Commissioner of Health.

#### **34:6A-42 OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION; APPEAL; HEARINGS; DETERMINATION**

- a. There is established an Occupational Safety and Health Review Commission within the Department of Labor to hear appeals from citations, notifications and penalties issued under this act. The Commission shall consist of three members appointed by the Governor from among persons who by reason of training, education or experience are qualified to carry out the functions of the commission. The Governor shall designate one of the members of the Commission to serve as chairman.
- b. Members of the Review Commission shall serve terms of four years and until their successors are appointed. The salaries, compensation and wages of the members of the Commission shall be established by the commissioner. The Department of Labor shall provide the Review Commission with the support staff necessary for the Review Commission to perform its duties. The members and the support staff shall be reimbursed for necessary expenses incurred in the performance of their duties.
- c. The Review Commission shall meet as often as is necessary to hear and rule in appeals from citations, notifications and penalties issued under this act. The Review Commission shall adopt rules with respect to the procedural aspects of its hearings.
- d. The Review Commission shall hear and make a determination upon any proceeding instituted before it, and shall make a report of the determination which shall constitute its final disposition of the proceedings. The report shall become the final order of the commission within 30 days of the issuance of the report.
- e. In the conduct of hearing the Review Commission may subpoena and examine witnesses, require the production of evidence, administer oaths and take testimony and depositions.
- f. After hearing an appeal the Review Commission may sustain, modify or dismiss a citation or penalty.

#### **34:6A-43 APPEALS FROM DECISION OF REVIEW COMMISSION**

Any appeal from a decision of the Review Commission shall be to the Appellate Division of the Superior Court.

#### **34:6A-44 RESTRAINING ORDERS**

The Attorney General, at the request of and on behalf of the commissioner, may bring an action in the Superior Court to restrain any conditions or practices in any workplace which the commissioner determines in accordance with N.J.S.A. 34:6A-41, are such that a danger exists which could reasonable be expected to cause death or serious physical harm. Any order issued under this act may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent dangers exist.

#### **34:6A-45 DISCRIMINATORY ACTS AGAINST EMPLOYEES; PROHIBITION; RESTRAINING ORDERS; WAIVER OF BENEFITS OR REQUIREMENTS OF ACT; INVALIDITY**

- a. No person shall discharge, or otherwise discipline, or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this section or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or others of any right afforded by this section.
- b. Any employee who believes that he has been discharged, disciplined or otherwise discriminated against by any person in violation of this section may, within 180 days after the employee first has knowledge such violation did occur, bring an action in the Superior Court against the person alleged to have violated the provisions of this section. In any such action, the Superior Court shall have jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay.
- c. Nothing in this section shall be deemed to diminish the rights of any employee under any law, rule or regulation or under any collective negotiations agreement.
- d. Any waiver by an employee or applicant for employment of the benefits or requirements of this act shall be against public policy and

be void and any employer's request or requirement than an employee waive any rights under this act as a condition of employment or continued employment shall constitute an act of discrimination.

#### **34:6A-46 EXPENDITURES TO MEET STANDARDS; EXEMPTION FROM LIMITS IMPOSED BY LAW**

The provisions of any law to the contrary notwithstanding, any expenditures required to meet the standards established by this act shall be exempt from any expenditure or appropriation increase limitation imposed under any law.

#### **34:6A-47 ADVISORS TO COMMISSION ON CAPITAL BUDGETING AND PLANNING ON WORKPLACE SAFETY AND HEALTH**

The Commissioner of Labor, the Commissioner of Community Affairs, and the Commissioner of Health shall serve in an advisory capacity to the New Jersey Commission of Capital Budgeting and Planning on matters of workplace safety and health, to ensure that new construction meets the standards established by this act.

#### **34:6A-48 ACT INAPPLICABLE TO RIGHT TO STRIKE**

Nothing in this act shall be deemed to give public employees the right to strike over occupational safety and health issues.

#### **34:6A-49 INAPPLICABILITY OF ACT TO STATE UNIFORM CONSTRUCTION CODE ACT OR UNIFORM FIRE SAFETY ACT**

Nothing in this act shall be deemed to conflict with or supersede any provision of the State Uni-

form Construction Code Act, N.J.S.A. 52:27D-119 et seq. or the code promulgated thereunder or to affect or limit the powers, duties, authorities and responsibilities of the Commissioner of Community Affairs or any enforcing agency thereunder. Nothing in this act shall be deemed to conflict with or supersede any provision of the Uniform Fire Safety Act, N.J.S.A. 52:27D192 et seq., or the code promulgated thereunder, nor affect or limit the powers, duties, authorities and responsibilities of the Commissioner of Community Affairs or any enforcing agency thereunder.

#### **34:6A-50 APPROPRIATIONS**

There is appropriated the sum of \$100,000.00 from the General Fund to effectuate the purposes of this act. The sum appropriated herein shall be allocated by the Director of the Division of Budget and Accounting to the Departments of Labor and Health upon his approval of an application therefor.

#### **34:61-51 EFFECTIVE DATE**

This act shall take effect immediately, except that the standards adopted pursuant to N.J.S.A. 34:6A-30 shall not become operative with regard to any employer as defined in N.J.S.A. 34:6A-27c(1) until the first day immediately following the first year after the standards otherwise take effect, and further, that the standards adopted pursuant to N.J.S.A. 34:6A-30 shall not become operative with regard to any employer as defined in N.J.S.A. 34:6A-27c(2) until the first day immediately following the second year after the standards otherwise take effect.